

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), and the Federal Employees Health Benefits Program ("FEHBP") (collectively the "United States") and Inglis Durable Medical Equipment Co., Inc. ("IDME") (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. IDME is a durable medical equipment company located at 2014 Ford Road, Unit L, Bristol, Pennsylvania 19007. IDME is a wholly-owned subsidiary of the Inglis Foundation. The allegations resolved by this Agreement pertain only to the durable medical equipment company and not the Inglis Foundation.

B. The United States contends that IDME submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, and/or the Medical Assistance Program ("Medicaid"), Title XIX of the Social Security Act, 42 U.S.C.

§§ 1396-1396v, and other federal health care programs, including the Office of Vocational Rehabilitation and the Federal Employees Health Benefits Program.

C. The United States contends that it has certain civil monetary claims against IDME under the False Claims Act, other federal statutes and/or common law doctrines, for engaging in the following conduct, regarding claims with a date of service from April 1, 1998 through October 31, 2003, relating to: billing for K14 motorized wheelchairs when in fact a K11 was provided; "upcoding" and/or "unbundling" accessories and other equipment associated with motorized wheelchairs, including but not limited to, anti-tipping devices, power tilt and recline seating systems, power elevated leg rests, and seats; billing "used" wheelchairs as new; and improper completion of the Certificates of Medical Necessity that served as the basis for the physician prescribing motorized wheelchairs, manual wheelchairs, rentals and accessories, and submitted and/or caused the submission of claims for reimbursement to Federal health care programs in connection therewith (hereinafter referred to as the "Covered Conduct").

D. IDME does not admit the contentions of the United States as set forth in Paragraph C.

E. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these

claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. At the time of execution of this Agreement, IDME agrees to pay to the United States, Three Hundred Thirty-Five Thousand Eight Hundred and Forty-Nine Dollars (\$335,849.00) (the "Settlement Amount"). IDME agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office.

2. IDME agrees to audit payments made by private third-party payors and individuals relating to similar conduct described above and reimburse overpayments made by private insurers and beneficiaries in a timely fashion. IDME agrees to provide all information relating to these audits and payments to the United States.

3. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of IDME set forth in this

Agreement, conditioned upon IDME's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release IDME, together with its current and former parent corporations, and the successors and assigns of any of them from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

4. In consideration of the obligations of IDME set forth in this Agreement, conditioned upon IDME's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against IDME, together with its current and former parent corporations, and the successors and assigns of any of them under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (7) (permissive exclusion for

fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 5, below.

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

(A) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(B) Any criminal liability;

(C) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(D) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(E) Any claims based upon such obligations as are created by this Agreement, including those created by the Corporate Integrity Agreement referred to in paragraph 6 below;

(F) Any claims based on a failure to deliver items or services due, except as set forth in the Covered Conduct;

(G) Any civil or administrative claims against any individuals, including former directors, officers, employees,

agents or shareholders of defendant IDME who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

6. IDME has entered into a Corporate Integrity Agreement ("CIA") with OIG-HHS, attached hereto as Exhibit A, which is incorporated into this Agreement by reference. IDME will immediately upon execution of this Agreement begin implementing its obligations under the CIA.

7. IDME agrees that it will comply fully with the applicable statutes, rules and regulations governing the Medicare and Medicaid Programs and other federal health care programs.

8. In the event that IDME fails to comply in good faith with any of the terms of this Settlement Agreement relating to it, or should any of IDME's representations or warrants be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- a. seek specific performance of this Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys fees and costs in its favor; or
- b. exercise any other right granted by law.

9. In the event that the United States exercises any of its rights under paragraph 8 of this Settlement Agreement, IDME specifically reserves all of its rights to challenge, defend and contest any such action.

10. IDME waives and will not assert any defenses IDME may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement bars a remedy sought in such criminal prosecution or administrative action. IDME agrees that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

11. IDME fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which IDME has asserted, could have asserted, or may assert in the future against the United States,

its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. The Settlement Amount that IDME must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and IDME agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

13. IDME agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf on IDME, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the Covered Conduct,
- (2) the United States' audit(s) and civil investigations(s) of the Covered Conduct,
- (3) IDME's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (4) the negotiation and performance of this Agreement,
- (5) the payment IDME makes to the United States pursuant to this Agreement,
- (6) the negotiation of and obligations undertaken pursuant to the CIA to:
 - (i) Retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
 - (ii) prepare and submit reports to the OIG-HHS, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph that may apply to compliance costs affects the

status of costs that are not allowable based on any other authority applicable to IDME.

All costs described or set forth in this Paragraph 13(a) are hereafter, "unallowable costs".

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by IDME, and IDME will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by IDME or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: IDME further agrees that within 90 days of the effective date of this Agreement, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or

payment requests already submitted by IDME or any of its subsidiaries, and will request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. IDME agrees that the United States, at a minimum, will be entitled to recoup from IDME any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment. Any payment due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by IDME or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on IDME or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

14. IDME covenants to cooperate fully and truthfully with the United States' investigation of individuals not

specifically released in this Agreement. Upon reasonable notice, IDME will make reasonable efforts to facilitate access to, encourage, and agrees not to impair, the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Upon reasonable request by the government, IDME agrees to provide all non-privileged documents and records in its possession, custody or control.

15. This Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity.

16. IDME agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. IDME waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

17. IDME expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3). Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants

and obligations set forth herein constitute a contemporaneous exchange for new value given to IDME, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

18. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. IDME represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the CIA shall be resolved pursuant to the procedures set forth therein.

21. This Agreement may not be amended except by written consent of the Parties, except that only IDME and OIG-HHS need consent to amendments to the CIA.

22. The undersigned individuals signing this Agreement on behalf of IDME represent and warrant that they are authorized by IDME to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____
VIRGINIA A. GIBSON
Chief, Civil Division
United States Attorney's Office
Eastern District of Pennsylvania

DATED: _____

BY: _____
DAVID R. HOFFMAN
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

LARRY J. GOLDBERG
Assistant Inspector General for
Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

INGLIS DURABLE MEDICAL EQUIPMENT CO., INC.

DATED: _____

BY: _____
KEVIN W. JONES
Chief Executive Officer

DATED: _____

BY: _____
PAULA G. SANDERS, ESQUIRE
Wolf, Block, Schorr and
Solis-Cohen, LLP
Counsel to Inglis Durable Medical
Equipment Co., Inc.